The Senate: An Overview

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Summary

Decisions made at the Constitutional Convention about the Senate still shape its organization and operation today. Several of these features merit discussion, because they highlight important and enduring characteristics of the Senate. These aspects include constituency, size, term of office, and special prerogatives. In addition, this report identifies a major constitutional change that the Founding Fathers could not foresee: the direct election of Senators.

Contents

Contacts

On July 16, 1787, the 55 Founding Fathers at the Constitutional Convention in Philadelphia reached what is commonly called the "Great Compromise."[1] The compromise emerged after a struggle between the large and small states over the system of representation for the House and Senate. The Framers readily accepted the principle of bicameralism—a two-house national legislature. After all, the British Parliament was bicameral as were most state legislatures. However, the Framers encountered sharp divisions in grappling with these two questions: should representation (the number of Members) in *both* chambers be apportioned according to each state's population, or, instead, should representation in the House be determined by population and in the Senate on state equality? Under the first approach, the large states would dominate both chambers; under the second plan, the large states would be advantaged in the House while all states, regardless of their population, would be represented equally in the Senate.

This clash between proportional versus equal representation provoked the most contentious debate at the Constitutional Convention and nearly led to its end. Delegate Luther Martin of Maryland wrote that differences over the issue "nearly terminated in a dissolution of the Convention." George Washington wrote to Alexander Hamilton that he "almost despaired" that the small and large states would ever resolve their differences.[2] In the end, the Great Compromise granted each side in the dispute a chamber where their interests could be protected and guaranteed.

House seats would be apportioned among the states based on population, with each state guaranteed at least one Member; Representatives would be directly elected by the people. By contrast, the Senate would be composed of two senators per state—regardless of population—indirectly elected by the state legislatures. As James Madison wrote in *Federalist No. 39*, "The House of Representatives will derive its powers from the people of America .... The Senate, on the other hand, will derive its powers from the States, as political and co-equal societies; and these will be represented on the principle of equality in the Senate."[3] The principle of two Senators from each state was further guaranteed by Article V of the Constitution: "no State, without its Consent, shall be deprived of equal Suffrage in the Senate."

Decisions made at the Constitutional Convention about the Senate still shape its organization and operation today, and make it one of the most distinctive legislative institutions in the world. As William E. Gladstone, four-time British Prime Minister during the 19th century, said about the American Senate, it is a "remarkable body, the most remarkable of all the inventions of modern politics."[4] Plainly, the Framers did not want the Senate to be another House of Representatives.

The institutional uniqueness of the Senate flows directly from many of the decisions made at the Constitutional Convention. Several of these features merit discussion, because they highlight

[1] The Great Compromise is sometimes referred to as the "Connecticut Compromise," because it was advanced by that state's delegates during the Constitutional Convention. Roger Sherman was the original sponsor of the proposal.

[2] The Martin and Washington quotes are from Catherine Drinker Bowen, *Miracle At Philadelphia: The Story of the Constitutional Convention, May to September 1787* (Boston: Little, Brown and Co., 1966), pp. 185-186.

[3] An oft-told story is about Thomas Jefferson's meeting with President George Washington. Jefferson was in France during the Constitutional Convention and upon his return went to visit Washington. During the meeting, Jefferson asked Washington why he had agreed to the creation of a Senate. Washington's reply: "Why did you pour that coffee into your saucer?" Jefferson answered, "To cool it." "Even so," responds Washington, "we pour legislation into the senatorial saucer to cool it."

[4] Quoted in George H. Haynes, *The Senate of the United States: Its History and Practice*, vol. 1 (Boston: Houghton Mifflin Co., 1938), Preface. The original source is: W. E. Gladstone, "Kin Beyond Sea," *North American Review*, September-October 1878, pp. 191-192.

important and enduring features of the Senate. These features include constituency, size, term of office, and special prerogatives.[5] The one modification to the plan not foreseen by the Framers was the direct election of Senators.

Constituency

The "one state-two Senator" formula means that most senators represent constituencies that are more heterogeneous than the districts represented by most House members. One result is that Senators must accommodate a larger diversity of interests and voices in their representational roles. For example, a House member might represent a district that is overwhelmingly agriculture in character. The Senators from that state focus on agriculture, too, but they must also be responsive to a wider array and diversity of interests. The bottom line is that Senators represent an entire state, not a part of it.

Because the votes of Senators are equal, balloting power in the Senate is not apportioned by population. As various scholars have pointed out: "The nine largest states are home to 51 percent of the population but elect only 18 percent of the Senate; the twenty-six smallest states control 52 percent of the Senate but hold only 18 percent of the population."[6] The disparity in the voting strength of Senators from lightly versus heavily populated states prompted the late Senator Daniel Moynihan, D-N.Y., to predict that sometime "in the twenty-first century the United States is going to have to address the question of apportionment in the Senate."[7]

Size of the Senate

From the outset the Senate's membership was relatively small compared to the House. When the Senate first convened in 1789, there were twenty-two Senators. North Carolina and Rhode Island soon entered the Union to increase the number to twenty-six. As new states entered the Union, the Senate's size expanded to the 100 that it is today.

The Senate's size significantly shapes how it works. For example, it operates in a generally informal manner, often relying on the unanimous consent of all 100 senators to function. There is large deference to minority views—either those of the minority party, a small group of lawmakers, or a single senator. The Senate's formal rules and precedents are less comprehensive than the many detailed rules and voluminous precedents of the larger House of Representatives. Viewed as "ambassadors" from the several states, the seed was planted early that senators should have few restraints placed on their parliamentary rights. For example, in 1789, the Senate informally "adopted a policy of keeping formal rules to a minimum," agreeing to twenty short rules. Further, in framing its rules, the Senate "quite naturally put a great premium on ease and dignity of speech."[8]

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[5] See Richard F. Fenno, Jr., "Senate," in Donald C. Bacon, Roger H. Davidson, and Morton Keller, eds., *The Encyclopedia of the United States Congress*, vol. 4 (New York: Simon & Schuster, 1995), pp. 1784-1789.

[6] See Gary C. Jacobson, *The Politics of Congressional Elections*, 7th ed. (New York: Pearson Education, Inc., 2009), p. 16.

[7] Quoted in Judith Havemann, "Moynihan Poses Question of Balance," *The Washington Post*, August 14, 1995, p. A15. For an excellent analysis of the many effects of Senate apportionment on representation, legislation, and leadership, see Frances E. Lee and Bruce I. Oppenheimer, *Sizing up the Senate: The Unequal Consequences of Equal Representation* (Chicago: University of Chicago Press, 1999).

[8] Roy Swanstrom, *The United States Senate, 1787-1801* (Washington: GPO, 1985), pp. 188, 191. This dissertation was published as a Senate Document (99-19) during the 99th Cong., 1st sess.

The Senate grants every Member two parliamentary freedoms that, so far as is known, no other lawmaker worldwide possesses. These two freedoms are unlimited debate and an unlimited opportunity to offer amendments, including non-relevant amendments. Both prerogatives are, of course, subject to certain constraints. As two Senate parliamentarians wrote, "Whereas Senate Rules permit virtually unlimited debate, and very few restrictions on the right to offer amendments, these [unanimous consent] agreements usually limit debate and the right of Senators to offer amendments."[9] Unanimous consent agreements establish a tailor-made procedure for considering virtually any kind of business that the Senate takes up. They are commonly drafted by the parties' floor leaders and managers and, to be implemented, must be agreed to by the entire Senate membership (that is, not objected to by any senator.) Two fundamental objectives of these accords are to limit debate and to structure the amendment process.

It was the smaller size of the Senate that no doubt encouraged these parliamentary traditions to emerge and flourish. Not until 1917 did the Senate even adopt a method for ending extended debate (called a "filibuster" if employed for dilatory purposes.) It was called cloture (closure of debate) and its procedural requirements are spelled out in Senate Rule XXII. So from 1789 to 1917 there was no way for the Senate to terminate extended debates except by unanimous consent, compromise, or exhaustion.[10]

Term of Office, Qualifications, and Selection

A key goal of the Framers, as noted earlier, was to create a Senate differently constituted from the other chamber so that it could check the popular passions that might overly influence legislation emanating from the directly elected House. To foster values such as deliberation, reflection, and continuity, the Framers made three important decisions. First, they set the senatorial term of office at six years even though the duration of a Congress is two years. The Senate is a "continuing body" with only one-third of its membership up for election at any one time. As Article I, section 3, states: "Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes." Consequently, the electorate that chooses the one-third up in November 2008 is different in various ways—in regard to the array of salient issues that may influence peoples' choices, for example—from the voters who selected the other two-thirds of the Senate. These lawmakers were influenced, respectively, by the public mood of the voters in November 2004 and 2006; thus, some of them might act collectively as a "brake" and block or slow down floor consideration of issues debated during the 2008 campaigns.

Second, to be a Senator, individuals must meet certain constitutional qualifications. For example, to hold office, Senators must be 30 years of age and nine years a citizen; House members are to be 25 years of age and seven years a citizen. The Framers expected Senators to be more seasoned and experienced than House members.[11] Whether this expectation has been met is problematic, even in Congress's earliest years when the likes of James Madison and Albert Gallatin served in

[9] Floyd M. Riddick and Alan S. Frumin, *Senate Procedure: Precedents and Practices* (Washington: GPO, 1992), p. 1311.

[10] See, for example, Sarah A. Binder and Steven S. Smith, *Politics or Principle? Filibustering in the United States Senate* (Washington: Brookings Institution Press, 1990).

[11] Gouverneur Morris of Pennsylvania, a delegate to the Constitutional Convention, stated: The Senate "ought to be composed of men of great and established property—an aristocracy .... Such an aristocratic body will keep down the turbulency of democracy." Quoted in Robert Dahl, *Pluralist Democracy in the United States: Conflict and Consent* (Chicago: Rand McNally, 1967), p. 35. Wary of unchecked popular rule, the Framers wanted the Senate to provide a sober "second look" at legislation sent to it by the popularly elected House.

the House. Unlike House members, the selection of senators was done by the state legislatures, which bolstered the states' role as a counterweight to the national government and insulated the Senate from popular pressures.[12]

Special Prerogatives

The House and Senate share lawmaking authority, but the Framers assigned special "advice and consent" prerogatives exclusively to the Senate. Under Article II, section 2, the Senate functions as a unicameral body when it considers (1) the ratification of treaties, which require approval by a two-thirds vote, or (2) presidential nominations for high governmental positions such as Federal judges, ambassadors, or Cabinet officers (all of whom require Senate consent by a majority vote). The Framers assigned the advice and consent responsibilities to the Senate (but not the House) because of certain characteristics embedded in that institution, such as stability, a longer time perspective, and its smaller size. As one of the Framers (Pierce Butler of South Carolina) noted, treaty negotiations "always required the greatest secrecy, which could not be expected in a large body" like the House.[13] The Senate's role in the appointments process, wrote Hamilton in *Federalist No. 65*, would serve as "an excellent check upon the spirit of favoritism in the President, and would tend greatly to preventing the appointment of unfit characters from State prejudice."

The Constitution (Article I, section 3) also grants the Senate the "sole Power to try all Impeachments." The House possesses the constitutional authority to decide by majority vote whether to impeach (or indict) executive or judicial officials while the Senate, by a two-thirds vote, determines whether to convict the indicted public officials, which could even include the president. "Where else," wrote Hamilton in *Federalist No. 65*, "than in the Senate could have been found a tribunal sufficiently dignified, or sufficiently independent? What other body would be likely to feel *confidence enough in its own situation*, to preserve unawed and uninfluenced the necessary impartiality between an *individual* accused, and the *representatives of the people, his accusers?*" (Italics in the original.)

The Senate, like any legislative institution, constantly changes in big and little ways. If the Framers returned today to visit the Senate, they would surely recognize that it remains the preeminent legislative forum for protecting minority rights and for debating and refining the great issues of the day. They would continue to find that many of their fundamental principles—two Senators from each state, the advice and consent role, or the impeachment prerogative—continue to govern the Senate's composition and activity. To be sure, they would likely be awe-struck by the country's many changes: the demographic diversity among the 50 states; the size and reach of the federal establishment; the rise of presidential power; the cost of campaigns; the role of political parties; the extent of the nation's international obligations; and numerous other societal, technological, or medical developments. They would soon discover a significant change to their handiwork, however: today's Senators no longer are elected by state legislatures.

[12] From a strategic viewpoint, election by state legislatures "increased the likelihood that the Constitution would be accepted when submitted to the state ratifying conventions." Robert C. Byrd, *The Senate, 1789-1989 Addresses on the History of the United States Senate* (Washington: GPO, 1988), p. 390.

[13] See *Treaties and Other International Agreements: The Role of the United States Senate* (Washington: GPO, 1984), p. 30. This committee print was prepared by the Congressional Research Service for the Senate Committee on Foreign Relations.

The Direct Election of Senators

In 1913 the Seventeenth Amendment to the Constitution was ratified providing for the direct election of Senators. The Framers would probably view this as the most significant constitutional change affecting the Senate. The election of Senators by state legislatures lasted for more than 125 years until the two institutions that were vested politically in the procedure—the U.S. Senate and the state legislatures—opted for the popular election of Senators. Why? Two words epitomize the fundamental drivers of the change: democracy and deadlock.

The direct election of Senators was triggered by the Progressive movement of the 1890s and early 1900s which advocated an agenda of democratic reform, such as women's suffrage, the direct primary, and the direct election of senators. Progressive leaders wanted to end the influence of powerful special interests, especially corporations, over state legislatures; block the purchase of Senate seats; blunt the influence of party bosses in determining who state lawmakers should select; and make senators directly answerable to the people for their actions or inactions. For example, the spread of direct primaries in many states "led to voters expressing their choice for senator on the primary ballot. Although not legally binding on the legislatures, the popular choice was likely to be accepted."[14]

The second major stimulus for the Seventeenth Amendment involved the often contentious state legislative deadlocks in electing Senators. Various factors provoked the deadlocks, such as different party control of the two chambers, and lengthy contests among as many as 80 or more senatorial candidates, with balloting extending over several weeks. As a scholar of the Senate reported, the "record of senatorial elections for the fifteen years, 1891 to 1905, shows forty-five such deadlocks—from one to seven in each of twenty states."[15] The combination of these two forces—the democratic impulse and disgruntlement with deadlocks—led to congressional passage of a direct election constitutional amendment in May 1912. Ratification by three-fourths of the state legislatures occurred a year later.

To close, as British Prime Minister Gladstone said, the Senate is a "remarkable body." Many senators throughout history have shared his view. As Senator Claude Pepper, D-FL, said in 1939, on the occasion of the Senate's 150th anniversary:

> The varied and extraordinary functions and powers of the Senate make it, according to one's view, a hydra-headed monster, or the citadel of constitutional and democratic liberties. Like democracy itself, the Senate is inefficient, unwieldy, inconsistent; it has its foibles, its vanities, its Members who are great, the near great, and those who think they are great. But, like democracy also, it is strong, it is sound at the core, it has survived many changes, it has saved the country from many catastrophes, it is a safeguard against any form of tyranny which ... might tend to remove the course of Government from persistent public scrutiny. In the last analysis it is probably the price we in America have to pay for liberty.[16]

[14] *Guide to Congress*, 5th ed., vol. 1 (Washington: CQ Press, 2000), p. 109.

[15] Haynes, *The Senate of the United States: Its History and Practice*, vol. 1, p. 86.

[16] Cited in *Tributes To The Honorable Robert C. Byrd* (Washington: GPO, 1988), p. xxi.

Author Information

Walter J. Oleszek
Senior Specialist in American National Government

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